July 2, 1997

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FIRST OF AMERICA
BANK CORPORATION

Director
Card Technology Division
Financial Management Division
U.S. Department of Treasury
Room 526, Liberty Center
401 14th Street, S.W.
Washington, D.C. 20227

RE: 31 CFR Part 207
RIN 1510-AA59

Dear Sir/Madam:

The following comments are submitted on behalf of First of America Bank Corporation, a $22 billion multi-bank holding company headquartered in Kalamazoo, Michigan, which has $15 billion in loans and $18 billion in deposits and serves over 3 million households in Michigan, Illinois, Indiana and Florida. The company engages in commercial and retail banking, as well as mortgage origination services in North Carolina and Arizona. The Corporation also provides trust, insurance, and other financial services, managing over $20 billion in trust and mutual fund assets. Based on total assets, First of America is ranked 32nd among banking companies in the United States.

Section 207.3 (a)(2) Duties of the Financial Agent/Comply with Regulation E

This section of the proposal requires that financial institutions acting in the capacity of "financial agent" with respect to the Direct Federal EBT program comply with Regulation E.

1. Sec. 205.7 of Reg E requires financial institutions to provide a disclosure at the time the "consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made...". The disclosure would have to include the phone number and address of the person or office to be notified when the consumer believes an unauthorized EFT has been made.

   Sec. 205.9 of Reg E also requires that an address and phone number used for inquiries or notices of error be included on the periodic statement.

   We believe Treasury should draft a standard disclosure to be used by all financial institutions. This disclosure should include the phone number and address of the Treasury which can be used by the recipient for the purpose of initiating claims for unauthorized transactions, as well as inquiries regarding amounts credited to the EBT account. This same address and phone number would be provided to recipients on required statements.

2. Sec. 205.11 stipulates the rules and timeframes financial institutions must follow to resolve a claim that an unauthorized electronic fund transfer has taken place.

   We believe that all inquiries, including those involving claims of unauthorized transactions, should be directed to the Treasury, with research to resolve the claim

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conducted by the financial institution, as necessary. The financial institution would then be accountable directly to the Treasury for its findings with respect to such inquiries. Since the financial institution is allowed only to credit the unbanked account with Direct Federal payments received through the ACH or State EBT payments, Treasury should fund the provisional credit or reimbursement necessary to resolve unauthorized transaction claims.

Section 207.3 Duties of the Financial Institution/General Issues

We request that the Treasury consider the following when developing the general duties of the financial institution:

1. **Establishing the Unbanked Account/Providing Access**

   Under the proposed requirements Treasury will electronically remit funds for each applicable unbanked recipient to the designated financial institution. The financial institution will establish an "account" for each recipient in which funds from the Treasury will be "deposited". These funds will then be accessible only via ATM or POS transaction through the use of a Security Benefit Card issued by the financial institution.

   It is our opinion that:

   - Treasury should provide the information necessary to establish the unbanked account, such as each recipient's name and address, directly to the institution (perhaps electronically) without any action required by the recipient. The financial institution would then mail the Security Benefit Card and personal identification number (PIN) directly to the recipient.

   - Recipients should be required to notify Treasury of any change in address; Treasury in turn would be required to provide updated recipient information to the financial institution.

   - If the recipient is eligible for benefits from more than one Treasury agency, all benefits should be directed to the same unbanked account for withdrawal.

   - Financial institutions, as the card issuer for these unbanked accounts, should be allowed to determine the most appropriate network to be used to route these transactions. Financial institutions should also be allowed to require "positive authorization" on all withdrawals. In other words, should a financial institution system be "down" at the time a withdrawal is requested, no amount of money will be allowed to be withdrawn.

   - For security purposes, financial institutions currently limit the amount that can be withdrawn by card through an ATM or POS terminal on a daily basis. Standard daily withdrawal limits should be established by the Treasury for these transactions.

- If the financial institution discovers that a recipient claiming to be "unbanked" actually has a deposit account with the financial institution, procedures should be established that will allow the financial institution to notify the paying agency to arrange for direct deposit instead. The financial institution should also be allowed to "refuse" to activate the "unbanked" account if it is aware that the recipient has an existing deposit account.

2. **Imposition of Fees**

- Transaction Fees

Financial institutions should be allowed to impose a "transaction" fee for withdrawals from the account. Without the imposition of a transaction fee, it is our belief that many existing direct deposit recipients will simply close their deposit accounts and request an EBT card in order to avoid paying monthly maintenance or transaction fees which are typically imposed on banked accounts. Currently, many of these unbanked recipients are already incurring large fees imposed by check cashing services to gain access to their benefits without the benefit of having their funds safely held by a financial institution until they are needed.

Transaction fees should be allowed in order to achieve some parity with those recipients who have assumed the responsibility of establishing a deposit account in order to receive the benefits to which they are also entitled.

- Non-Proprietary ATM Access Fees

Financial institutions should be allowed to assess a fee on those transactions that are conducted at ATMs owned by a financial institution other than that associated with the unbanked account. Financial institutions charge such fees in order to recover costs assessed by the interchange network for routing transactions back to the applicable financial institution.

Financial institutions should also be allowed to impose a surcharge on ATM transactions performed at ATM machines owned by the institution but conducted with a Benefit Security Card associated with another participating institution. Currently, financial institutions that have implemented surcharging cannot systematically recognize cards issued by another financial institution as not subject to surcharging, anymore than a financial institution can systematically prevent a surcharge from being imposed on a transaction performed at a non-proprietary machine by one of its cardholders.

3. **Fraud Issues**

Prior to opening any bank account, financial institutions typically conduct a review to determine if an individual's previous banking relationship(s) have resulted in repeated overdrafts, bank fraud, merchant losses due to NSF checks, etc. If the individual does have such a history the financial institution may decline to open the account in order to avoid the risk of potential loss.

Under the Direct Federal EBT program, it appears that a financial institution, as agent for the Treasury, will have little say in whether or not they will accept an unbanked recipient. The intent of the direct deposit program in general is to solve problems the Treasury faces resulting from forgery, counterfeiting, theft, fraud and delay in the mail. However, for certain, new problems will arise as a result of fraud issues related to the EBT program. Claims for unauthorized transactions and lost or stolen cards, for example, will result in substantial losses. The burden for these losses should not be shifted to financial institutions. The current mandate that all federal benefits be paid out through a financial institution, either through the Direct Deposit program or the Direct Federal EBT program, leaves financial institutions stuck in the middle of a situation loaded with potential risk, with no protection. Financial institutions will not even have the authority to close out these unbanked accounts to protect itself against cases of fraud.

Treasury should indemnify financial institutions against all losses associated with the EBT program unless Treasury can prove negligence on the part of the financial institution.

4. **Financial Institution Liability for Payments made after Recipient's Death**

Under 31 CFR 210, a financial institution's liability with respect to direct deposit payments is currently limited to the amount of payments made to the deposit account within the first 45 days after a recipient's death as long as the financial institution had no prior knowledge of the recipient's death at the time the direct deposit payments were made.

By definition, an unbanked recipient does not have an established relationship (i.e. account) with the financial institution, therefore, circumstances under which a financial institution may usually become aware of an individual's death may be non-existent. Since all transactions must be conducted via ATM or POS, branch personnel will generally have no means of becoming familiar with a recipient's established banking routines to question the individual's absence. There will be no joint "accountholder" to notify the financial institution of a recipient's death.

In light of these circumstances, Treasury should consider eliminating all financial institution liability for payments made after a recipient's death, unless Treasury can prove negligence by the financial institution.

5. **Payment of Interest**

Due to the anticipated costs of supporting these unbanked accounts, financial institutions should not be required to pay interest on these funds. If market conditions are favorable, financial institutions should have the option of paying interest.

6. **Inactivity**

If financial institutions are required to monitor the "unbanked" account to determine whether or not activity has taken place during a time period such as that normally prescribed by state unclaimed property laws, procedures should dictate that Treasury be notified of the affected accounts. A standard timeframe should be established for all unbanked accounts regardless of the state in which the financial institution operates. It would then be Treasury's responsibility to make contact with recipients. If no contact is made, funds would be returned to the Treasury by the institution and the Treasury would be responsible for remitting any funds to the applicable states.

7. **Reimbursement of Financial Institution Costs**

The financial institution should be reimbursed for costs incurred while acting in its capacity as agent for the Treasury (i.e., statements, card issuance, customer service, etc.). For example, we estimate that it costs $2.50 to produce and mail a single ATM card and the related PIN. The cost of issuing a single account statement is $1.17. The estimated $100 million per year the government expects to save by the direct deposit requirement should not result in additional expense burdens to financial institutions.

Overall, we question whether the EBT program is a viable solution for the unbanked recipient. Many of these recipient's are unbanked by choice. If the individual does not have a basic bank account, why would anyone expect these recipient's to be willing to use an ATM card? Many of these recipients are elderly and are intimidated by technology. Will an ATM machine even be conveniently located for their use? Will local merchants have POS capabilities? We ask Treasury to consider these issues prior to finalizing the EBT program requirements.

If you have any questions, please call me at (616) 376-7022.

Sincerely,

Eric S. Durham
Director of Compliance

cc: Ed Yingling
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